

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE TERRORIST ATTACKS ON
SEPTEMBER 11, 2001

CIVIL ACTION NO.
03 MDL 1570 (GBD)

-----X
FIONA HAVLISH, in her own right
and as Executrix of the ESTATE OF
DONALD G. HAVLISH, JR., Deceased,

RUSSA STEINER, in her own right
and as Executrix of the ESTATE OF
WILLIAM R. STEINER, Deceased,

CLARA CHIRCHIRILLO, in her own right
and as Executrix of the ESTATE OF
PETER CHIRCHIRILLO, Deceased,

TARA BANE, in her own right,
and as Executrix of the ESTATE OF
MICHAEL A. BANE, Deceased,

GRACE M. PARKINSON-GODSHALK, in her
own right and as Executrix of the ESTATE OF
WILLIAM R. GODSHALK, Deceased,

ELLEN L. SARACINI, in her own right
and as Executrix of the ESTATE OF
VICTOR J. SARACINI, Deceased,

THERESANN LOSTRANGIO, in her own right
and as Executrix of the ESTATE OF
JOSEPH LOSTRANGIO, Deceased, *et al.*,

Plaintiffs,

v.

SHEIKH USAMAH BIN-MUHAMMAD
BIN-LADEN, a.k.a. OSAMA BIN-LADEN,

CIVIL ACTION NO.
03-CV-9848 – GBD

Case Transferred from the
United States District Court
for the District of Columbia
Case Number 1:02CV00305

AL-QAEDA/ISLAMIC ARMY,
an unincorporated association, *et al.*,

FOREIGN STATE DEFENDANTS:

THE ISLAMIC REPUBLIC OF IRAN,

AYATOLLAH ALI-HOSEINI KHAMENEI,

ALI AKBAR HASHEMI RAFSANJANI,

IRANIAN MINISTRY OF
INFORMATION AND SECURITY,

THE ISLAMIC REVOLUTIONARY
GUARD CORPS,

HEZBOLLAH,
an unincorporated association,

THE IRANIAN MINISTRY
OF PETROLEUM,

THE NATIONAL IRANIAN
TANKER CORPORATION,

THE NATIONAL IRANIAN
OIL CORPORATION,

THE NATIONAL IRANIAN
GAS COMPANY,

IRAN AIRLINES,

THE NATIONAL IRANIAN
PETROCHEMICAL COMPANY,

IRANIAN MINISTRY OF
ECONOMIC AFFAIRS AND FINANCE,

IRANIAN MINISTRY OF
COMMERCE,

IRANIAN MINISTRY OF DEFENSE
AND ARMED FORCES LOGISTICS,

THE CENTRAL BANK OF THE
ISLAMIC REPUBLIC OF IRAN, *et al.*,

Defendants.

MOTION FOR APPROVAL OF FORM AND PROCEDURE FOR *LIS PENDENS*

NOW COMES the Plaintiffs in this matter by counsel and hereby move for approval of form and procedure for the filing of *Lis Pendens*.

In support hereof, the Plaintiffs state as follows:

1. On January 28, 2008, the President signed the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181).

2. The new law includes new provisions and amends certain former portions of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602, *et seq.* which creates a federal *lis pendens* procedure in federal courts with respect to assets subject to attachment in aid of execution, or execution, under the new 28 U.S.C. § 1610.

3. With respect to the new federal *lis pendens* procedure, 28 U.S.C. § 1605A(g) specifically states:

(g) Property Disposition –

(1) IN GENERAL – In every action filed in a United States district court in which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which jurisdiction is alleged under this section, the filing of a notice of pending action pursuant to this section, to which is attached a copy of the complaint filed in the action, shall

have the effect of establishing a lien of *lis pendens* upon any real property or tangible personal property that --

- (A) subject to attachment in aid of execution, or execution, under section 1610
 - (B) located within that judicial district;
and
 - (C) titled in the name of any defendant, or titled in the name of any entity controlled by any defendant if such notice contains a statement listing such controlled entity.
- (2) NOTICE- A notice of pending action pursuant to this section shall be filed by the clerk of the district court in the same manner as any pending action and shall be indexed by listing as defendants all named defendants and all entities listed as controlled by any defendant.
- (3) ENFORCEABILITY – Liens established by reason of this subsection shall be enforceable as provided in chapter 111 of this title.

4. The new law does not describe, other than in very general terms, how this federal *lis pendens* procedure is to operate. The Plaintiffs are concerned that the establishment of their liens through the notices of *lis pendens* in other jurisdictions will be delayed by the uncertainty of local clerks as to how to implement this procedure. In order to avoid this delay, the Plaintiffs have filed this Motion to confirm how Plaintiffs may obtain a *lis pendens* in other jurisdictions for its Motion for Supplemental Relief.

5. The Plaintiffs propose the following procedure and content for the filing of *lis pendens* under the new statute:

- A. The Plaintiffs will file the notice of *lis pendens* form attached hereto as Exhibit 1. The form shall identify the name of the person/entity subject to the notice of *lis pendens* pursuant to the new statute;
- B. The Plaintiffs will attach a copy of the third amended complaints as an exhibit to the notice of *lis pendens*.

- C. The Plaintiffs will attach a copy of the order approving this motion as an exhibit to the notice of *lis pendens*.
- D. The clerk's office shall index the notice of *lis pendens* on its miscellaneous docket or in the same manner as any new action and it shall be indexed by listing as defendants all persons/entities identified in the notice of *lis pendens*.

6. Upon the filing of the notice of *lis pendens* under the new statute, the Plaintiffs will have liens in property in the judicial districts where the notice of *lis pendens* are filed to the extent permitted under 28 U.S.C. 1605A(g) which the Plaintiffs may subsequently enforce.

7. This Motion is being submitted to aid with the efficient implementation of the newly created *lis pendens* procedure. In the absence of the relief requested herein, the Plaintiffs believe that clerk's offices will be confused and will not know how to address Plaintiffs' requests for *lis pendens* under the new statute.

WHEREFORE, the Plaintiffs respectfully request that this Court:

- A. Grant the Motion; and
- B. Grant such other and further relief as is just and appropriate under the circumstances.

Dated: _____, 2012

Respectfully submitted,

/s/ Thomas E. Mellon, Jr.

Thomas E. Mellon, Jr. (PA Bar No. 16767)
John A. Corr (PA Bar No. 52820)
Stephen A. Corr (PA Bar No. 65266)
Thomas E. Mellon, III (PA Bar No. 81631)

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(215) 638-9330

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175 West 200 South, Suite 4000
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3 North Second Street, Suite 300
St. Charles, IL 60174
(630) 232-6333
(630) 845-8982

Attorneys for the Havlish Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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IN RE TERRORIST ATTACKS ON
SEPTEMBER 11, 2001

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INFORMATION AND SECURITY,

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THE IRANIAN MINISTRY
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THE NATIONAL IRANIAN
TANKER CORPORATION,

THE NATIONAL IRANIAN
OIL CORPORATION,

THE NATIONAL IRANIAN
GAS COMPANY,

IRAN AIRLINES,

THE NATIONAL IRANIAN
PETROCHEMICAL COMPANY,

IRANIAN MINISTRY OF	:
ECONOMIC AFFAIRS AND FINANCE,	:
	:
IRANIAN MINISTRY OF	:
COMMERCE,	:
	:
IRANIAN MINISTRY OF DEFENSE	:
AND ARMED FORCES LOGISTICS,	:
	:
THE CENTRAL BANK OF THE	:
ISLAMIC REPUBLIC OF IRAN, <i>et al.</i> ,	:
	:
_____ Defendants. _____	:

ORDER

UPON CONSIDERATION of the Motion for Approval of Form and Procedure for *Lis Pendens* (the "Motion") filed by the Plaintiffs/Judgment Creditors in the above-referenced matter, it is this _____ day of _____, 2012, by the United States District Court for the Southern District of New York, ORDERED:

1. That the Motion is hereby GRANTED;
2. The form of Notice of *Lis Pendens* attached to the Motion is hereby APPROVED;
3. The Plaintiffs/Judgment Creditors shall be authorized to file Notices of *Lis Pendens* in the form approved by this Court in judicial districts where they believe assets subject to attachment in aid of execution, or execution, are located pursuant to 28 U.S.C. § 1605A(g).
4. The Clerk's offices where the Plaintiffs/Judgment Creditors file such Notices of *Lis Pendens* shall accept such Notices of *Lis Pendens* for filing. The Clerk's offices shall file the *Notice of Lis Pendens* on the miscellaneous docket or in the same

manner as any pending action and it shall be indexed by listing as defendants all persons/entities identified in the Notice of *Lis Pendens*.

Dated: _____, 2012

Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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AYATOLLAH ALI-HOSEINI KHAMENEI, :

ALI AKBAR HASHEMI RAFSANJANI, :

IRANIAN MINISTRY OF :

INFORMATION AND SECURITY, :

THE ISLAMIC REVOLUTIONARY :

GUARD CORPS, :

HEZBOLLAH, :

an unincorporated association, :

THE IRANIAN MINISTRY :

OF PETROLEUM, :

THE NATIONAL IRANIAN :

TANKER CORPORATION, :

THE NATIONAL IRANIAN :

OIL CORPORATION, :

THE NATIONAL IRANIAN :

GAS COMPANY, :

IRAN AIRLINES, :

THE NATIONAL IRANIAN :

PETROCHEMICAL COMPANY, :

IRANIAN MINISTRY OF :

ECONOMIC AFFAIRS AND FINANCE, :

IRANIAN MINISTRY OF :

COMMERCE, :

IRANIAN MINISTRY OF DEFENSE :

AND ARMED FORCES LOGISTICS, :

THE CENTRAL BANK OF THE :
ISLAMIC REPUBLIC OF IRAN, *et al.*, :
: :
Defendants. :

NOTICE OF LIS PENDENS

Pursuant to 28 U.S.C. § 1605A(g), the Plaintiffs hereby provide notice of the pending action which affects all property located in this judicial district owned by any of the following persons/entities:

SHEIKH USAMAH BIN-MUHAMMAD
BIN-LADEN, a.k.a. OSAMA BIN-LADEN
Last known location
Afghanistan

THE TALIBAN, a.k.a. the Islamic
Emirate of Afghanistan
an unincorporated association
Last known location
Afghanistan

MUHAMMAD OMAR, individually
Last known location
Afghanistan

AL QAEDA/ISLAMIC ARMY,
an unincorporated association
Last known location
Afghanistan

THE ISLAMIC REPUBLIC OF IRAN,
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017

THE REPUBLIC OF IRAQ,
c/o The Permanent Representative
of Iraq to the United Nations
14 East 79th Street
New York, NY 10021
or
The Iraqi Interest Section
c/o The Algerian Embassy

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1801 P Street, N.W.
Washington, DC 20036

AYATOLLAH ALI HOSEINI-
KHAMENEI, Supreme Leader
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017

ALI AKBAR HASHEMI RAFSANJANI
Previously Identified and Served as Unidentified Terrorist 1
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017

IRANIAN MINISTRY OF
INFORMATION AND SECURITY
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017

THE ISLAMIC REVOLUTIONARY
GUARD CORPS
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017
Washington, DC 20007

HEZBOLLAH,
an unincorporated association
c/o Permanent Mission of Iran
to the United Nations
622 Third Avenue
New York, NY 10017

THE IRANIAN MINISTRY
OF PETROLEUM
c/o Bijan Namdar-Zanganeh
Hafez Crossing, Taleghani Avenue
Before Hafez Bridge
Tehran, Iran

THE NATIONAL IRANIAN
TANKER CORPORATION
Previously identified as Unidentified Terrorist 2
c/o Mohammed Sourj, Chairman
#67 and 88; Atefi Street; Africa Ave.

THE NATIONAL IRANIAN
OIL CORPORATION

Previously Identified as Unidentified Terrorist 3
c/o Madhi Mir Maezzzei
Chief Managing Director
Hafez Crossing, Taleghani Avenue
P.O. Box 1863
Tehran, Iran

THE NATIONAL IRANIAN
GAS COMPANY

Previously Identified as Unidentified Terrorist 4
#410, Mafatteh Crossing,
Taleghani Avenue
P.O. Box 6394,4533
Tehran, Iran

IRAN AIRLINES

Previously Identified as Unidentified Terrorist 5
c/o Eng. Davoud Keshavarzian
Chairman and CEO
Iran Air H.Q.
Mahrabad Airport
Tehran, Iran

THE NATIONAL IRANIAN
PETROCHEMICAL COMPANY

Previously Identified as Unidentified Terrorist 6
#46 Haft Tir Square
Karimkhan Zand Boulevard
P.O. Box 11365-3484
Tehran, Iran

IRANIAN MINISTRY OF
ECONOMIC AFFAIRS AND FINANCE

c/o Safdar Hoseini
Sour Esrafil Street,
Bab Homayoun Avenue
Tehran, Iran

IRANIAN MINISTRY OF
COMMERCE

c/o Mohammad Shariat-Madari
492 Valy-e Asr Avenue
Between Taleghani Crossroad and
Valy-e Asr Square
Tehran, Iran

IRANIAN MINISTRY OF DEFENSE
AND ARMED FORCES LOGISTICS

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Ali Shamkhan Dabestan Street
Seyyed Khandan Bridge
Resalat Expressway
Tehran, Iran

THE CENTRAL BANK OF THE
ISLAMIC REPUBLIC OF IRAN
Previously Identified as Unidentified Terrorist 7
c/o Ebrahim Sheibany
Governor
Miramad Boulevard, #144
Tehran, Iran

Attached hereto is true and correct copy of the Third Amended Complaint filed June 23, 2010 and the Order of _____, 2012 approving this Notice of *Lis Pendens*.

Dated: _____, 2012

Respectfully submitted,

/s/ Thomas E. Mellon, Jr.

Thomas E. Mellon, Jr. (PA Bar No. 16767)
John A. Corr (PA Bar No. 52820)
Stephen A. Corr (PA Bar No. 65266)
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& FLOWERS, LLC
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(630) 232-6333
(630) 845-8982

Attorneys for the Havlish Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 2012 copies of the foregoing Notice of *Lis Pendens* were delivered via first-class mail postage prepaid to each Defendant listed above at the address stated herein.
